

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

FREDERIC Z. HENSLEY AND DIANNE R.  
HENSLEY,

Plaintiffs,

v.

3M COMPANY, ET AL.,

Defendants.

**CIVIL ACTION NO: 2:15-CV-02087-DCN**

**DEFENDANT 3M COMPANY'S ANSWERS TO LOCAL RULE 26.03  
INTERROGATORIES**

Pursuant to Rule 26.03 of the Local Civil Rules for the United States District Court, District of South Carolina, Defendant, 3M Company (hereinafter "this Defendant"), by its undersigned attorneys, makes the following answers to Court ordered Interrogatories:

**1. A short statement of the facts of the case:**

Answer: A complaint was filed on April 17, 2015 by Frederic Z. Hensley and Dianne R. Hensley against this defendant, among others. The complaint alleged that Mr. Hensley was diagnosed with mesothelioma stemming from his alleged exposure to asbestos-containing products during his work while serving in the US Navy including at the Charleston Naval Shipyard. The case was removed to the United States District Court for the District of South Carolina on May 20, 2015. An amended complaint was filed on August 26, 2015 alleging wrongful death, survival and loss of consortium causes of action.

**2. The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony:**

Answer: This Defendant may call as fact witnesses Frederic Z. Hensley, coworkers identified by plaintiffs' counsel, treating physicians or other health care professionals who

examined and/or treated Frederic Z. Hensley, custodian of any medical records pertaining to Frederic Z. Hensley, and corporate representatives of 3M Company. This Defendant also incorporates by reference its Rule 26(a)(1) Initial Disclosures served in this matter.

**3. The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered):**

Answer: This Defendant is not prepared to list its experts, but will likely retain a pathologist, pulmonologist and an industrial hygienist.

**4) A summary of the claims or defenses with statutory and/or case citations supporting the same:**

Answer: The primary defenses that appear to be at issue in this lawsuit at this time are listed below. To the extent that further discovery reveals additional defenses that may be at issue, this Defendant hereby expressly reserves its right to amend this Answer at a later time.

**S.C. Code Ann. § 15-73-20 (statutory defense to strict liability);**

**S.C. Code Ann. § 15-38-15 (modified joint and several liability); and**

**S.C. Code Ann. § 15-5-150 (door closing statute).**

**Lack of Sufficient Exposure Evidence to a 3M Asbestos-Containing Product**

*Henderson v. Allied-Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007); *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162 (4th Cir. 1986).

**3M Did Not Manufacture, Sell, Supply, or Place Into the Stream of Commerce the Asbestos-Containing Materials Allegedly at Issue.**

*Baughman v. General Motors Corp.*, 780 F.2d 1131, 1133 (4th Cir. 1986).

**Product Misuse**

*Anderson v. Green Bull, Inc.*, 322 S.C. 268, 270-71, 471 S.E.2d 708, 710 (Ct. App. 1996).

**Comparative Negligence**

*Berberich v. Jack*, 392 S.C. 278, 286, 709 S.E.2d 607, 611 (2011).

**Assumption of Risk**

*Cole v. Boy Scouts of America*, 397 S.C. 247, 251-52, 725 S.E.2d 476, 478 (2011).

**Intervening and Superseding Cause**

*Roddey v. Wal-Mart Stores East, LP*, 400 S.C. 59, 86-87, 732 S.E.2d 635, 649 - 650 (Ct. App. 2012); *see also Rife v. Hitachi Const. Mach. Co., Ltd.*, 363 S.C. 209, 217, 609 S.E.2d 565, 569 (Ct. App. 2005).

**No Post-Sale Duty to Warn**

*Bragg v. Hi-Ranger*, 319 S.C. 531, 548, 462 S.E.2d 321, 331 (Ct. App. 1995).

**Learned Intermediary and/or Sophisticated User**

*Lawing v. Trinity Mfg., Inc.*, 406 S.C. 13, 23, 749 S.E.2d 126, 131 (Ct. App. 2013); *see also Bragg, supra*.

**5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02:**

- A. Exchange of Fed. R. Civ. P. 6(a)(2) expert disclosures; and**
- B. Completion of discovery.**

Answer: The parties have submitted a proposed scheduling order to the Court.

**6) The parties shall inform the Court whether there are any special circumstances that would affect the time frames applied in preparing the scheduling order.**

Answer: The parties have submitted a proposed scheduling order to the Court.

**7) The parties shall provide any additional information requested in the Pre-Scheduling Order or otherwise requested by the assigned judge.**

Answer: The parties have submitted a proposed scheduling order to the Court.

Respectfully submitted this 28th day of September, 2015.

/s/ Michael C. Griffin

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*Attorneys for Defendant 3M Company*

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of September 2015, I have filed electronically filed with the Clerk of Court a true copy of the foregoing **DEFENDANT 3M COMPANY'S ANSWERS TO LOCAL RULE 26.03 INTERROGATORIES** using the CM/ECF system which will send notification of such filing to all parties as listed below:

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